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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

**TERENCE B. BURKE,**

Case No. 6:10-CV-6328-TC

Plaintiff,

vs.

**WELLS FARGO BANK N.A.,**

Defendant.

Defendant's  
MOTION TO DISMISS AND RESPONSE  
TO MOTION FOR PRELIMINARY  
INJUNCTION  
Pursuant to Fed. R. Civ. P. 12(b)(6)

ORAL ARGUMENT BY TELEPHONE  
REQUESTED

**LR 7-1(a) CERTIFICATION**

Counsel for defendant Wells Fargo Bank, N.A. (improperly named in the summons) ("Wells Fargo") certifies that she attempted to confer by telephone in good faith with plaintiff to resolve this dispute before filing this motion, by calling the telephone number set forth in the Court's electronic docket. The person who answered the telephone advised that counsel dialed the wrong number. Counsel for defendant Wells Fargo utilized publicly available records in an attempt to obtain a telephone number for plaintiff, but was unsuccessful.

PAGE 1 - MOTION TO DISMISS AND RESPONSE TO MOTION FOR PRELIMINARY  
INJUNCTION

**MOTION**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Wells Fargo moves to dismiss this case with prejudice on the grounds that plaintiff has failed to state a claim upon which relief may be granted. Wells Fargo further requests that plaintiff's motion for preliminary injunction be denied.

In support of this motion, Wells Fargo relies upon the Memorandum in Support of defendant's Motion to Dismiss, Request for Judicial Notice or Incorporation by Reference, and the Declaration of Pilar C. French in Support of Defendant's Request for Judicial Notice or Incorporation by Reference and Motion to Dismiss submitted concurrently herewith.

DATED: October 29, 2010

LANE POWELL PC

By /s/ Pilar C. French  
Pilar C. French, OSB No. 962880  
Telephone: 503.778.2170  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on October 29, 2010, I caused to be served a copy of the foregoing  
MOTION TO DISMISS AND RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION  
on the following person(s) in the manner indicated below at the following address(es):

Terence Burke  
771 Shadow Wood Drive  
Bend, OR 97702 (name and address in complaint)

And

Terence B. Burke  
PO Box 658  
Sisters, OR 97301 (name and address in summons)

- ☐ by **CM/ECF**
- ☐ by **Electronic Mail**
- ☐ by **Facsimile Transmission**
- ☒ by **First Class Mail**
- ☐ by **Hand Delivery**
- ☐ by **Overnight Delivery**

/s/ Pilar C. French  
\_\_\_\_\_  
Pilar C. French

CERTIFICATE OF SERVICE